

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Part 20 and 24 of the) WT Docket No. 96-59
Commission's Rules -- Broadband)
PCS Competitive Bidding and the)
Commercial Mobile Radio Service)
Spectrum Cap)
)
Amendment of the Commission's) GN Docket No. 90-314
Cellular PCS Cross-Ownership Rules)

To: The Commission

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COMMENTS OF U.S. INTELCO WIRELESS COMMUNICATIONS, INC.

U.S. Intelco Wireless Communications, Inc. ("USIW"), pursuant to Section 1.429 of the Commission's Rules,¹ respectfully submits the following Comments in response to the Notice of Proposed Rule Making ("NPRM") released herein on March 20, 1996. USIW's primary goal in this proceeding is to encourage the Commission's prompt award of the remaining Personal Communications Service ("PCS") frequency block licenses in a manner which is consistent with established policy goals and Congressional directives. In support thereof, USIW shows the following:

USIW and its affiliates have demonstrated their commitment to the deployment of a wide variety of advanced telecommunications

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^{1/} 47 C.F.R. § 1.429.

services throughout rural America.² USIW is similarly committed to assisting the independent telephone company industry in bringing PCS to rural portions of this country.³ USIW is, therefore, a party in interest in this proceeding.

USIW submits that the D, E and F Block PCS auctions should proceed with all due speed under the following procedures:

1. Simultaneous auctions for the D, E and F Blocks;
2. Reservation of the F Block to participation by small businesses and rural telephone companies;⁴

^{2/} USIW is a wholly-owned subsidiary of USTN Services, Inc. ("USTN"). USTN, through its affiliates, has been an active participant in all phases of the PCS proceedings, having advocated consistently the philosophy supporting the positions presented herein. See, e.g., Comments of U.S. Intelco Networks, Inc. filed November 10, 1993 and Reply Comments filed November 30, 1993 (in response to the Notice of Proposed Rule Making released October 12, 1993, In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253). USTN Holdings, Inc., the parent of USTN, is owned by more than 250 Independent Telephone Companies ("Independents"), and provide a wide variety of services to over 1000 Independents nationwide, including the implementation of an Independent SS7 network and related database services, calling card billing validation services, 800 RESPORG services and revenue administration and other related database services.

^{3/} USIW has supported the Independents in their PCS endeavors since 1993 by providing education, planning and other support services. In addition, USIW represents the interests of Independents by assisting in the negotiation of PCS equipment and service procurement agreements.

^{4/} USIW cannot provide specific statistical or anecdotal evidence as requested by the Commission regarding its proposal to maintain F Block gender- and race-based preferences (see NPRM at para. 6); it is, therefore, unable to address this issue. To the extent that the record in this proceeding will justify such preferences, USIW advocates that minority- and women-owned businesses be afforded the same preferences as herein proposed for application to small businesses and rural telephone companies. Lacking that record, USIW agrees with the Commission's tentative

(footnote continued on following page)

3. F-Block eligibles participating in the D and E auctions are entitled to a bidding credit of 25% and entrepreneurs are entitled to a 10% bidding credit;
4. Maintenance of reduced deposit and installment plans for F Block eligibles and entrepreneurs; and
5. Elimination of "gaming" by prohibiting any five percent or more investor in an F Block applicant from having a 5% or more investment in a D or E Block applicant.

USIW submits that implementation of these steps will preserve the integrity of the auction process and effectuate the Congressional mandate⁵ that rural telephone companies and other specified entities are allowed meaningful participation in spectrum auctions.

I. THE D, E AND F BLOCKS SHOULD BE AUCTIONED SIMULTANEOUSLY

In addition to the obvious benefit of faster licensing, simultaneous auction of the D, E and F Blocks will eliminate the possibility that the licensees emerging from later-conducted auctions will be disadvantaged in the marketplace by administrative delays. The public interest will be served by the timely availability of an array of competitive choices. In addition, the Commission's resources would be conserved by the concurrent conduct

(continuation of footnote from previous page)

conclusion that the race- and gender-based provisions should be eliminated in order that the auctions can be held expeditiously. NPRM at para. 26. See infra discussion of definitions of "small business" and "rural telephone company."

⁵/ The Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66, 107 Stat. 312 (1993)) added Section 309(j) to the Communications Act, which requires the Commission to ensure that small businesses, rural telephone companies and businesses owned by members of minority groups and women are provided the opportunity to participate in the provision of spectrum services.

of all remaining PCS auctions.

II. F BLOCK ELIGIBILITY SHOULD BE CONFINED TO SMALL BUSINESSES AND RURAL TELEPHONE COMPANIES

USIW proposes that the F Block be reserved for the participation of small businesses and rural telephone companies, as those terms are currently defined by the Commission's Rules. As the bid prices in the continuing C Block auction continue to spiral beyond the predictions of the most optimistic budget-balancer,⁶ it becomes imperative to ensure that the price of the remaining PCS spectrum licenses remains within the financial reach of the entities specified by Congress as preferred licensees. Under USIW's proposal, that goal, together with benefit of simplification of eligibility rules, can be achieved.

USIW proposes that the current definition of "small business"⁷ be maintained and eligibility for F Block participation be limited to applicants "controlled"⁸ by small businesses.⁹ In turn, status

⁶/ As of the close of Round 93 on Friday, April 12, 1996, the total net value (total amount bid discounted by the 25% bidding credit) of bids for the C Block license for all markets equalled more than \$ 9.8 billion, over \$ 2 billion more than the total amount bid for the A and B Blocks **combined**.

⁷/ 47 C.F.R. § 24.720(b)(1) provides that

[a] *small business* is an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than \$40 million for the preceding three years.

⁸/ USIW also advocates maintenance of the current definition of "control group" for purposes of application of its proposals. 47 C.F.R. § 24.720(k).

as a "small business applicant" should be determined by accounting for the gross revenues of all owners (and their affiliates) of 25% or more of the equity interest in the applicant. USIW also supports the current rules concerning consortia of small businesses.

The advantages of this proposal are obvious. The identity of the preferred entity, a "small business," is ascertainable and clear. One major criticism of the conduct of the C Block auction is that the rules regarding eligibility are very complex. The complexity stems, in part, from the Commission's concern that eligibility for preferences be confined to the class of entities designated by Congress; the achievement of this goal is complicated by the recognition of the difficulty in attracting capital. Under the USIW proposal, the desired clarity is achieved without sacrificing the ability to form an entity capable of attracting investment capital.

USIW also advocates retaining the Rules' definition of "rural telephone company" for the purpose of PCS licensing. This definition was developed over the course of a rulemaking focused on

^{9/} USIW also notes that confining eligibility for F Block participation to "small businesses" and rural telephone companies will also solve the open issue of whether C Block winners are ineligible for F Block auctions simply because the value of the C Block license may inflate the asset base, a test for eligibility as an "entrepreneur." See 47 C.F.R. § 24.709(a)(1). If the eligibility question were limited to a calculation of gross revenues, the issue of disadvantage based solely upon previous winning bids would be minimized, assuming the 10 MHz auctions are held promptly. Since no licenses have yet been issued, it is unlikely that C Block systems will be generating revenues within a relatively short time-frame.

the current and future role of existing telecommunications service providers in the context of spectrum auctions and service provision. Although Congress has since defined "rural telephone company" for the purpose of application of specific provisions of the Telecommunications Act of 1996 (the "1996 Act"), there is no indication in either the Act itself or the legislative history that Congress intended that the definition adopted for the purpose of implementation of the 1996 Act's specific directives be expanded to encompass on-going proceedings unaffected by the 1996 Act. USIW therefore submits that if Congress had intended to superimpose the newly-crafted definition of "rural telephone company" on all proceedings, it would have explicitly so directed.

III. F-BLOCK ELIGIBLES AND ENTREPRENEURS SHOULD BE AWARDED BIDDING CREDITS IN THE D AND E BLOCK AUCTIONS

Effectuating the Congressional mandate to ensure wide dissemination of licenses requires that the intended class of beneficiaries should also be able to compete with larger, deep-pocket players for the D and E 10 MHz blocks on a more balanced basis. USIW proposes, therefore, that entities qualified to participate in the F Block auction should be allowed to maximize their opportunities by also bidding for the D or E Blocks. To increase their competitiveness in the D and E Blocks, and to increase overall competition for licenses, USIW proposes that a 10% bidding credit be awarded to F-Block eligibles bidding in the D and

E Blocks.¹⁰ In addition, "entrepreneurs" should be entitled to a bidding credit of 10% in Blocks D and E to encourage the participation of mid-sized companies. The encouragement of maximum competition on a level playing field is consistent with the public interest.

IV. REDUCED DEPOSIT AND INSTALLMENT PAYMENT PLANS SHOULD BE MAINTAINED FOR ELIGIBLE ENTITIES

The reduced up-front and down payment allowances for small businesses, rural telephone companies and entrepreneurs, together with the ability to pay the bid price in installments, are important elements in the ability of designated entities to compete effectively. The ability of these entities to attract capital is greatly enhanced by the reduced pressures on cash flow that these mechanisms provide. There is, moreover, no indication that the build-out costs for a 10 MHz PCS system will be significantly less than the costs associated with a 30 MHz system. Accordingly, there exists no reason to modifying or eliminate these mechanisms as currently applied in either the F Block or as applied to F-Block eligible or entrepreneurs participating in the D and E Block auctions.¹¹

^{10/} Under the USIW plan, all F Block participants will be competing with similarly-situated entities; accordingly, no bidding credit is necessary to ensure the participation of small businesses and rural telephone companies within the reserved spectrum block.

^{11/} See 47 C.F.R. § 24.711.

V. FIVE PERCENT INVESTORS IN F BLOCK APPLICANTS SHOULD BE RESTRICTED IN THEIR INVESTMENTS IN D AND E BLOCK APPLICANTS

Under current rules, a non-controlling investor may have interests in multiple C Block applications.¹² In the context of simultaneous auctions where one frequency block is reserved to eligible entities, this arrangement has the potential to influence the auction process. For example, an investor in an F Block applicant could itself individually bid for markets in the D and E Blocks, where the F Block applicant itself may participate. The investor's incentive to bid independently in the same market will be a function of the value of its interest in the F Block eligible, multiplied by the bidding credit afforded the designated entity.

Accordingly, USIW proposes that no entity (or affiliate of an entity) which owns 5% or more of the equity interest in an applicant for F Block licenses be allowed to own a 5% or more equity interest in a D or E Block applicant. In addition, F Block investors should be precluded from agreeing to or arranging post-auction ownership or other financial arrangements, and from entering into management or marketing agreements, with D or E Block applicants until the submission of down payments for the D, E and F Block licenses.

Deep-pocket players will, under the USIW proposal, be required to choose the manner in which they will participate in the D, E and F Block auctions. Rather than being able to "game" the auction, they must choose between the ability to control a 10 MHz licensee

¹²/ See, e.g., 47 C.F.R. § 1.2105(c).

or participate in an "preferred" entity and the benefits to which that entity is entitled. This result will enhance the integrity of the auction process.

VI. Conclusion

It is incumbent upon the Commission to ensure that the auction process results in effectuation of its Congressional mandate. Implementation of the USIW plan will produce the required and desired outcome of a fair and competitive process which allocates spectrum licenses to designated entities.

Respectfully submitted,

U.S. INTELCO WIRELESS COMMUNICATIONS, INC.

By:

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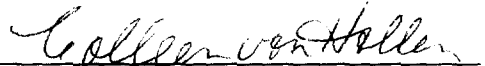
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April 15, 1996

CERTIFICATE OF SERVICE

I, Colleen von Hollen, hereby certify that a copy of the foregoing "Comments" on behalf of U.S. Intelco Wireless Communications, Inc. was served on this 15th day of April 1996, by hand delivery, to the following parties:


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